

Remarks

This Amendment is in response to the Final Office Action dated **September 27, 2010**. Claims 38-41 and 43-52 are pending in this application. Claims 41 and 43 have been withdrawn from consideration. The Office Action rejected claim 45 under 35 USC § 102 over Moriuchi (US 5879381); rejected claims 38, 39, 44, 46, 47 and 49-52 under 35 USC § 103 over Mathis (US 6129755) in view of Wijay (US 5824059); rejected claims 38, 39, 44, 46, 47 and 49-52 under 35 USC § 103 over Mathis in view of Wijay and further in view of Richter (US 7534257); and rejected claim 45 under 35 USC § 112, second paragraph.

By this Amendment, claim 45 is amended for clarification purposes. Reconsideration in view of the above amendment and the following remarks is requested.

Claim Rejections - 35 USC § 112

The Office Action rejects claim 45 under 35 USC § 112, second paragraph, noting that the term “circumferential connecting struts” did not have an antecedent.

Claim 45 is amended to delete the term “circumferential.” Amended claim 45 is believed to be in full compliance with 35 USC § 112.

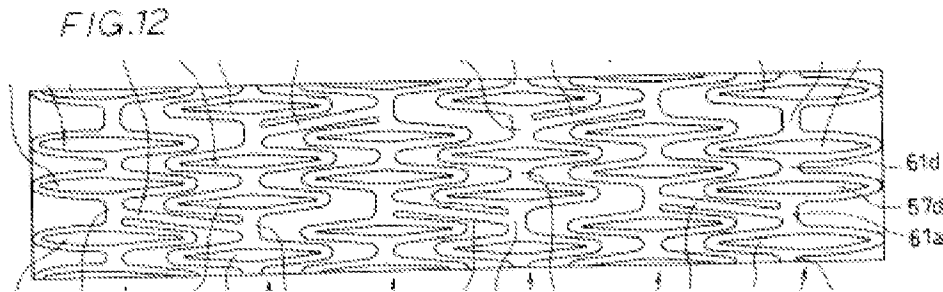
Applicants request withdrawal of the rejection of claim 45 under 35 USC § 112.

Claim Rejections – 35 USC § 102

The Office Action rejected claim 45 under 35 USC § 102 over Moriuchi. This rejection is traversed.

Claim 45 recites, “the stent body defining a plurality of cells...the stent body having a plurality of adjacent closed circumferential support structures...a plurality of connecting struts interconnecting at least some of the adjacent closed circumferential support structures...each cell of the stent partially defined by a connecting strut” (emphasis added).

The rejection cites to Moriuchi Figure 12, provided below, and asserts that Moriuchi’s disclosure of type-A cells and type-B cells anticipates claim 45 because the claim “requires type-B cells, but does not exclude type-A cells.” See Office Action at page 3.



The assertion in the rejection is traversed. The Moriuchi stent clearly includes cells that are not partially defined by a connecting strut, as required by claim 45.

The rejection admits that Moriuchi teaches two types of cells, and argues that the claim does not exclude the first type of cell. The problem with the reasoning in the rejection is that, under the rejection's terminology, the claim explicitly requires each cell to be a type-B cell. The rejection's admission that the stent includes two types of cells amounts to an admission that Moriuchi does not teach a stent that meets the limitations of claim 45.

The rejection has not adequately explained how the Moriuchi stent discloses a stent that meets each limitation of claim 45 – the rejection has not applied each limitation of claim 45 to the Moriuchi stent structure in a way that actually meets the limitations of claim 45. For example, the Examiner has not highlighted a portion of the Moriuchi framework that defines the claimed closed circumferential support structures and connecting struts, which also meets the limitation “each cell of the stent partially defined by a connecting strut.”

The Moriuchi annular units clearly include cells that are not partially defined by a connecting strut, as required by claim 45. Therefore, Moriuchi does not anticipate claim 45. Applicants request withdrawal of the rejection under 35 USC § 102.

Claim Rejections – 35 USC § 103

The Office Action rejected claims 38, 39, 44, 46, 47 and 49-52 under 35 USC § 103 over Mathis in view of Wijay, and rejected claims 38, 39, 44, 46, 47 and 49-52 under 35 USC § 103 over Mathis in view of Wijay and further in view of Richter.

These rejections are traversed because the applied references do not disclose or suggest each limitation of any rejected claim.

Overlapping Apex Portions

Independent claim 38 recites, “at least some of the apex portions of adjacent closed circumferential support structures being configured to longitudinally overlap one another.”

Independent claim 46 recites, “at least some of the apex portions of adjacent circumferential support structures being configured to longitudinally extend past each other when in the un-deployed configuration thus providing longitudinal overlap.”

The rejection admits that Mathis does not disclose or suggest the overlapping apex portions, but asserts that Wijay does. See Office Action at page 4.

Wijay does not disclose or suggest the claimed overlapping apex portions. Nor does Wijay disclose “closed circumferential support structures.”

The Wijay stent does not comprise a plurality of spaced, closed bands. The Wijay structure is formed from a continuous wire member 20 that winds to form several rings 12, 14, 16. See Figures 1 and 5, and column 4, lines 35-49.

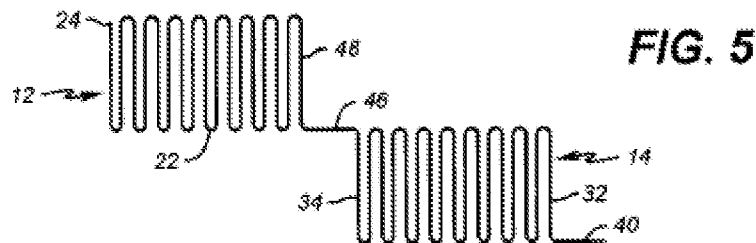


Figure 5 is provided above. The Examiner asserts that Figure 5 shows overlap of adjacent turns. See Office Action at page 4. This assertion is traversed.

Figure 5 does not show overlap of the adjacent apex portions. At most, Figure 5 shows that the apex portions of adjacent rings could be close to one another; however, Figure 1 shows that the apex portions do not overlap. Figure 1 shows a perspective view of the stent that Figure 5 depicts in flat pattern. Figure 1 does not show any overlap.

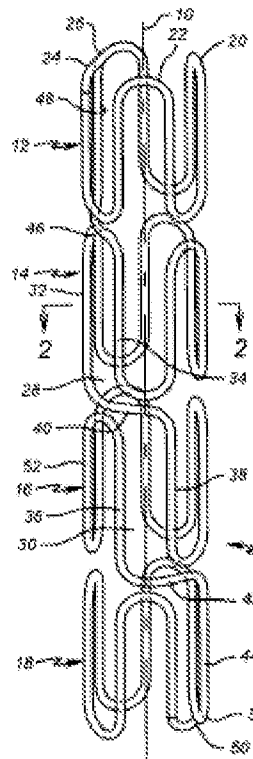


FIG. 1

The text of Wijay does not mention overlap. Further, each strut of a given Wijay ring is the same length – which suggests that the apex portions do not overlap. The Examiner appears to be “reading in” the concept of overlap based upon the existence of the crosstie 46 in Figure 5. A crosstie 46 extending between two adjacent rings 12, 14 does not amount to the claimed overlap of apex portions.

Therefore, the combination of Mathis and Wijay does not disclose or suggest each limitation of claims 38 or 46, or any claim dependent therefrom.

Additionally, claim 38 further recites “closed” circumferential support structures, and therefore requires overlap of apex portions of adjacent “closed” circumferential support structures. Wijay does not teach closed rings – the Wijay rings are open.

Applicants request withdrawal of the rejection of independent claims 38 and 46, and all claims dependent therefrom.

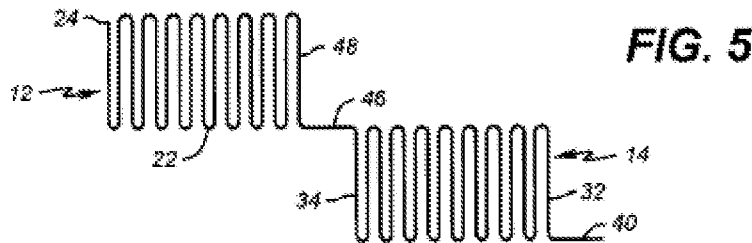
Reason to Modify

Rejections on obviousness grounds cannot be sustained by mere conclusory

statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007).

The rejection proposes to modify the Mathis stent by providing some longer struts to cause overlapping apex portions. See Office Action at page 4. This proposal is traversed because the applied references do not disclose longer struts – the concept has been gleaned from Applicants' disclosure using impermissible hindsight.

As discussed above, Wijay does not actually teach overlap of adjacent apex portions. The Examiner has merely alleged that the concept is disclosed in Figure 5, provided below.



The Examiner has not cited to any teaching in Wijay that establishes disclosure of the concept of overlap. The Examiner has not cited to any teaching that establishes the concept of longer struts within a circumferential support structure.

Nor has the Examiner cited to any prior art teaching that would have motivated a person of ordinary skill in the art to modify Mathis in a way that would achieve the overlap. The applied references do not disclose the concept or provide any reason to achieve the concept.

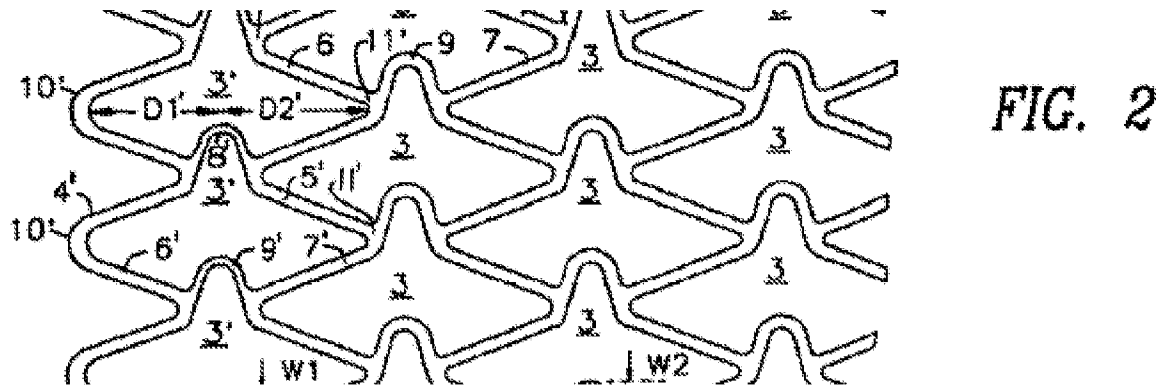
The Examiner proposes to “provide some longer struts” for the Mathis stent. This proposal stems from impermissible hindsight because neither Mathis nor Wijay discloses the concept of longer struts.

The Examiner has not articulated a reason why a person of ordinary skill in the art would have actually modified the Mathis stent. The Examiner does not give any reason for performing the proposed modification. Therefore, the Examiner has not presented a *prima facie* case of obviousness against any claim rejected under 35 USC § 103.

Applicants request withdrawal of all rejections asserted under 35 USC § 103.

Richter Reference

The Office Action admits that Mathis and Wijay do not teach a connecting strut that is wider than a longitudinal strut, then cites to Richter, asserting that Richter teaches wider and thinner connecting struts. See Office Action at page 4.



Richter Figure 2, provided above, does show connectors of different width – see e.g. connector 9 and connector 9'. However, the Examiner has not alleged that Richter teaches the subject matter necessary for the rejection (e.g. a connecting strut that is wider than a longitudinal strut).

Thus, the rejections in view of Richter do not propose to reach the subject matter of the rejected claims.

The rejection also cites to *In re Rose*, arguing that a change in size is within the level of ordinary skill in the art. The rejection does not propose to change the overall size (e.g. scale up) of the device, but instead proposes to change only certain portions while not changing other portions. *In re Rose* does not support the assertions made in the current rejections.

Applicants request withdrawal of all rejections applying Richter.

Conclusion

Based on at least the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 38-41 and 43-52 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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